deal: It would afford the opportunity for the candidates to present a much more in-depth discussion of the important campaign issues than is possible in the short spot announcement; it would be free and thus would be available for some candidates who have been unable to purchase television time; and it could become a focal point in the campaign -- a mini-debate between the candidates, sharpening their differences and informing and interesting the public.

We also point out that the proposal is simply a floor -- not a ceiling. This is not some rigid scheme that must be adhered to. Licensees would be free to adopt political programming plans that differ by going beyond this "floor" plan. They could, for example, employ longer segments, even of a half-hour duration;[18] they could slot the candidates, back to back, with each having 15 segments.[19] The variations are numerous and would be left to the licensee's discretion. The "floor" simply assures satisfaction of this core responsibility and thus renewal, so far as this criterion is concerned.

The licensee would also have complete discretion as to the races to be offered such time, in accord with the broadcast

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presentations on such losing operations. In any event, like the children's television requirement, this is a core public service responsibility in exchange for free use of the valuable spectrum (and other benefits).

[18] Noncommercial stations particularly might use longer segments.

[19] See pp. 14-15 for the "equal time" benefits of so proceeding.

statutory scheme. Of course, we would hope that licensees would focus on races that are significant and important to their communities -- yet have not been covered extensively in other political programming or even at times commercial announcements. But we also recognize that every race, even ones that receive the most attention, would benefit from the extension of free time along these lines. Take, for example, the last Presidential campaign when, in addition to the debates, interviews on news shows, commercials, etc., there was an unprecedented number of appearances on talk show programs, MTV, late night shows, etc. Suppose the networks had afforded the three candidates 10 minutes each in several 30-minute programs to set out their views on the great issues of the campaign (e.g., the economy, including the budget deficit; health care; foreign policy), or had decided to present the Sunday evening political program proposed by the Joan Shorenstein Barone Center of Harvard University.[20] No one could seriously dispute that such in-depth programming would have been a most worthwhile addition in informing and interesting the public.

It follows, we believe, that under the statutory scheme, the licensee must have complete discretion, unreviewable by the Commission or any governmental entity, as to the races to be selected for this free allotment of programming time. Further, while we would hope that the licensees in any given area would

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[20] John Ellis, "Nine Sundays: A Proposal for Better Presidential Campaign Coverage," Joan Shorenstein Barone Center, John F. Kennedy School of Government, Harvard University, Sept. 1992.

consult with one another, so that significant races are not omitted, this again is a matter solely for the licensees' judgment.

There remains the question of the equal opportunities requirement of Section 315. Where there are no fringe party candidates (e.g., Socialist Labor; Libertarian; Vegetarian; etc.), this poses no problem: The licensee could present the major party candidates (or any serious third party candidate) in rotating order in these 5-minute segments (with each getting an opportunity in prime time). Where there are fringe party candidates as in the Presidential race,[21] the licensee could make use of the recent King ruling[22], exempting under 315(a)(4) back-to-back presentations of candidates from the equal opportunities requirement; in television, it could present, say, the two major party candidates, back to back, in 2 and 1/2 minute segments; in radio the division might be where each gets half of a minute-and-a-half segment. This would have the advantage of being even more of a confrontation on the issues, with the same audience hearing both sides; the disadvantage would be the reduced time for each of the candidates to explain their positions. Again, use of this arrangement, either to create more interest or because of the presence of fringe party candidates, would be a matter for the licensee's judgment.

This then would be the outline of the proposal which we urge

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[21] See King Broadcasting Co. v. FCC, 860 F.2d 465, 467 (D.C. Cir. 1988).

[22] See King Broadcasting Co., 6 FCC Rcd 4998 (1991), dealing with the remand in King Broadcasting Co. v. FCC, supra.

would markedly promote the "larger and more effective use" of broadcasting in the public interest (Section 303(g); NBC v. U.S., 319 U.S. 190, 216 (1943). It could be accomplished either through a rule or a policy, with processing guidelines. In either case, it would, we believe, be effective to accomplish its important goals.

For legal reasons, we do not suggest that the proposal include cable television. We recognize the growing importance of cable programming and that for the most part, the audience makes little distinction as to whether it is watching an over-the-air or cable programmer in switching channels in cable households, now in over 60% of the U.S. TV households. We would hope that just as in the recent case of the television violence issue,[23] cable would voluntarily take up this question also and consider its responsibilities to the public. But we believe that the Commission is foreclosed from proceeding in light of the proscription in Section 624(f)(1) on any new Federal or State agency content regulation not in existence at the time of the 1984 Cable Act.

Congress has always shown great interest in this area of political broadcasts. Thus, it might take up this question of free programming time, broadcast in order to fulfill a core responsibility of the broadcast licensee as public trustee. It could thus not only definitively set the general policy, as it did in the area of children's television programming, but it could also deal with such issues as including cable television or the problem of equal time in the situation involving fringe party candidates.

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[23] See Broadcasting Mag., July 5, 1993, at 10.

But of course, no one can say whether or not Congress will turn to this matter. This petition is thus directed to the Commission because we strongly urge that it is time -- indeed long past time -- for effective action by the Commission in this area, so important to democratic processes.

5. No Congressional enactment precludes adoption of this policy.

Finally, we deal here with the argument that this is an area which has been totally occupied by a comprehensive Congressional scheme, leaving no room for agency action along the above lines. This is clearly not the case.

The starting point for analysis of this issue is "the language employed by Congress" (CBS, Inc. v. FCC, supra, 453 U.S. at 377). There is no statutory language precluding the proposed FCC action as to free programming time for candidates. As shown by Section 624(f)(1) (supra, 17), Congress knows how to make clear its intention to confine the agency role when it wants to do so.

Here on the contrary, Congress has stressed in the statute and legislative history its full agreement with the Commission that affording time for political broadcasts is a crucial part of the public interest requirement for renewal of license. See 1-4, supra. The Supreme Court has stressed the same value as vital to the First Amendment -- as the very "essence of self-government." CBS, Inc. v. FCC, 453 U.S. at 396. The Commission here would be fleshing out a part of that crucial public interest responsibility in light of a significant deficiency. As shown, the agency has ample authority to do so in the plain terms

of the statute. See n.13.

We believe that the preclusion argument may stem from confusion between what Congress has done in the area of campaign finance reform and what the public trustee obligation can entail in this area. While the reform process appears to be still evolving, Congress has delineated a scheme for candidate access to paid time as a facet of campaign finance reform. The Commission can adopt and has adopted rules and interpretations to carry out that scheme.[24] In doing so, the Commission must act consistently with the statutory requirements; it could not, for example, change the rate approach or time periods specified.

But this campaign finance reform legislation is directed "...to a right of reasonable access to the use of stations for paid political broadcasts on behalf of ... candidacies..." (CBS, Inc. v. FCC, 453 U.S. at 382. It does not deal at all with the issue of free time for political programming in order to fulfill a public trustee need. We stress again that this modest free time proposal has nothing at all to do with campaign finance reform, and indeed, if promulgated, would not in any way obviate the need for such reform in the view of petitioners (and any common sense evaluation of the marked differences between the approach proposed here and that under consideration in the Congress). See n.7, supra.

The soundness of our position is pointed up by considering a hypothetical situation. Suppose the Commission had

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[24] See, e.g., the recent action on "lowest unit rate," In the Matter of Codification of the Commission's Political Programming Policies, 7 FCCrcd 678 (1992); recon., 7 FCCrcd 4611 (1992).

adopted a free time programming approach similar to that here proposed in 1970, a year before the 1971 Federal Election Campaign Act. There can be no doubt that the Commission would have had the power to so proceed; that Congress would have enacted the 1971 reform legislation to reduce the cost and enhance paid access to the electronic media, especially for the spot announcement so much in demand; and that Congress would have left intact the Commission's modest requirement for free time for programming presentations in light of its clear emphasis on the desirability generally of political broadcasts. We submit that the Commission has the same power today to act to promote the public interest in the broadcast field in this important respect.

CONCLUSION

For the above reasons, we urge the Commission to promptly issue a Notice of Inquiry and Proposed Rule Making, so that a proposal along the foregoing lines can be the subject of study and comment, and, we would hope, definitive action before the next election period.

Respectfully submitted,

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